

# Exhibit A

**MATTLEMAN, WEINROTH & MILLER, P.C.**

Robert W. Williams, Esq. (Attorney ID No.: 048992014)

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Cherry Hill, New Jersey 08034

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Our File No.: 17320.21514

*Attorneys for Plaintiff*

**BENAMAX ICE LLC**

Plaintiff,

vs.

**MERCHANTS MUTUAL INSURANCE  
COMPANY, JOHN DOES (1-10) and ABC  
COMPANIES (1-10)**

Defendant(s)

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
CAMDEN COUNTY

DOCKET NO.

CIVIL ACTION

**COMPLAINT**

Plaintiff, BENAMAX ICE LLC ("BENAMAX" or "Plaintiff"), having a principal place of business of 124 Mayfair Lane in the Township of Mount Laurel, County of Burlington and State of New Jersey, through its undersigned counsels, by way of Complaint, avers the following:

**PARTIES**

1. Plaintiff, BENAMAX, is a limited liability company, organized under the laws of the State of New Jersey, with a mailing address of 124 Mayfair Lane, Mount Laurel, NJ 08054.

2. Defendant, Merchants Mutual Insurance Company ("Merchants Mutual" or "Defendant"), is located at 250 Main Street, Buffalo, New York 14202.

3. Defendants, John Does 1 through 10 and ABC Companies 1 through 10, inclusive, are sued herein under fictitious names. Their true names and capacities are presently unknown to Plaintiff. When said true names and capacities are ascertained, Plaintiff will amend this Complaint

by inserting such information. Plaintiff is informed and believe and thereon allege that each of the factitiously named Defendants are responsible in some manner for the occurrences alleged herein and Plaintiff's damages were proximately caused by said Defendants.

#### **JURISDICTION AND VENUE**

4. Jurisdiction and venue properly lay in the Superior Court of New Jersey, County of Camden, pursuant to *R. 4:3-2(a) & (b)* because Defendant regularly conducts business in Camden County.

#### **COMMON FACTUAL ALLEGATIONS**

5. Plaintiff repeats each and every allegation contained in the foregoing paragraphs of this Complaint as if same were set forth at length herein.

6. BENAMAX is a walk-in style quick service food retail establishment serving frozen desserts including, but not limited to Ice Cream and Italian Ice.

7. BENAMAX's food service establishment is located at 101 Haddon Avenue, Westmont, NJ 08108.

8. BENAMAX purchased a Merchants Advantage Plus Businessowners Policy from Merchants Mutual bearing Policy No.: BOPI083506 (the "Policy").

9. The insurer under the Policy is Merchants Mutual Insurance Company.

10. The Policy is contained on form BP 00 03 01 10.

11. The Policy Period is from February 15, 2020 to February 15, 2021.

12. The Policy provides coverage to the following location: 101 Haddon Avenue, Westmont, NJ 08108.

13. The Policy provides coverage for "Action of Civil Authority."

14. The Policy provides coverage for "Business Income and Extra Expense."

15. On March 9, 2020 the Governor of New Jersey, Phil Murphy, signed Executive Order 103 which declared both a Public Health and State of Emergency in New Jersey.

16. On March 11, 2020, COVID-19 was declared to be a global pandemic by the World Health Organization.

17. On March 13, 2020, the President of the United States of America declared a national emergency as a result of COVID-19.

18. On March 21, 2020, Governor Murphy signed Executive Order 107 which required New Jersey Residents to remain home or at their place of residence subject only to certain limited exceptions. (The averments contained within paragraphs 15 through 18 are collectively referred to as "Governmental Actions").

19. As a result of the above-referenced Governmental Actions, BENAMAX as suffered a direct physical loss of and damage to its property because it has been unable to use its property for its intended purpose.

20. As a result of the Governmental Actions, BENAMAX was required to close its food establishment.

21. On April 20, 2020, BENAMAX submitted a claim for coverage to Merchants Mutual for the losses it suffered.

22. On April 20, 2020, Merchants Mutual denied BENAMAX's claim for coverage.

#### **COUNT I – BREACH OF CONTRACT**

23. Plaintiff hereby incorporates by reference paragraphs 1 through 22 above as if set forth in full.

24. The Policy is an enforceable contract between BENAMAX and Merchants Mutual.

25. The Policy provides “Action of Civil Authority” coverage.
26. The Policy provides coverage for “Business Income and Extra Expense” coverage.
27. BENAMAX suffered an insured loss.
28. Defendant’s refusal to provide coverage for losses suffered constitutes breach of contract.

**WHEREFORE**, Plaintiff demands judgment in its favor and against Defendant as follows:

- a. An award of Consequential and Compensatory Damages;
- b. Attorneys’ fees and costs; and
- c. Such other relief as the Court deems just and proper.

**COUNT II – DECLARATORY JUDGMENT (N.J.S.A. 2A:16-50 ET SEQ.)**

29. Plaintiff hereby incorporates by reference paragraphs 1 through 28 above as if set forth in full herein.

30. Plaintiff has fully complied with its obligations under the Policy.

31. Plaintiff’s losses continue to accrue as of the filing of this complaint as a result of the Governmental Actions.

32. Defendant’s April 20, 2020 disclaimer letter precludes coverage for both past, present, and future losses.

33. An actual controversy exists as to the extent and scope of coverage provided by the Policy.

**WHEREFORE**, Plaintiff demands a declaratory judgment in its favor and against Defendant as follows:

- a. Declaring that Plaintiff’s losses as a result of the Governmental Actions are insured losses under the Policy; and

- b. Declaring that Defendant is obligated to pay the full amount of losses incurred  
as a result of the Governmental Actions.

**MATTLEMAN, WEINROTH & MILLER, P.C**  
*Attorneys for Plaintiff*

*/s/ Robert W. Williams*

\_\_\_\_\_  
By: Robert W. Williams, Esq.

*/s/ Ashley S. Nechemia*

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By: Ashley S. Nechemia, Esq.

Dated: May 29, 2020

**DESIGNATION OF TRIAL COUNSEL**

**PLEASE TAKE NOTICE**, that pursuant to R. 4:25-4, the Plaintiff hereby designates Robert W. Williams, Esquire, and Ashley S. Nechemia, Esquire, of the firm BENAMAX ICE LLC as designated trial counsel for all purposes in this matter.

**MATTLEMAN, WEINROTH & MILLER, P.C.**  
*Attorneys for Plaintiff*

*/s/ Robert W. Williams*

\_\_\_\_\_  
By: Robert W. Williams, Esq.

*/s/ Ashley S. Nechemia*

\_\_\_\_\_  
By: Ashley S. Nechemia, Esq.

Dated: May 29, 2020

**CERTIFICATION OF NO OTHER ACTIONS**

PLEASE TAKE NOTICE, that pursuant to R. 4:5-1(b)(2), it is hereby stated that the matter in controversy is not the subject of any other action pending in any other court or of a pending arbitration proceeding to the best of my knowledge or belief. Also, to the best of my belief, no other action or arbitration proceeding is contemplated. Further, other than the parties set forth in this pleading, I know of no other parties that should be joined in the above action. In addition, I recognize the continuing obligation of each party to file and serve on all parties and the court an amended certification if there is a change in the facts stated in this original certification.

**MATTLEMAN, WEINROTH & MILLER, P.C.**  
*Attorneys for Plaintiff*

*/s/ Robert W. Williams*

\_\_\_\_\_  
By: Robert W. Williams, Esq.

*/s/ Ashley S. Nechemia*

\_\_\_\_\_  
By: Ashley S. Nechemia, Esq.

Dated: May 29, 2020



**NOTICE PURSUANT TO R. 1:5-1(a) AND R. 4:17-4(c)**

PLEASE TAKE NOTICE, that pursuant to R. 1:5-1(a) and R. 4:17-4(c), the party submitting this pleading to the Court for filing hereby demand that each party named in the this complaint and/or amended complaint that serves or receives pleading of any nature (including discovery requests) to or from any other party to the action, forward copies of same along with any documents provided in answer or response thereto to counsel for Plaintiff and this is a continuing demand.

**MATTLEMAN, WEINROTH & MILLER, P.C.**  
*Attorneys for Plaintiff*

*/s/ Robert W. Williams*

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By: Robert W. Williams, Esq.

*/s/ Ashley S. Nechemia*

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By: Ashley S. Nechemia, Esq.

Dated: May 29, 2020

**NOTICE PURSUANT TO R. 1:7-1(b)**

**PLEASE TAKE NOTICE**, that to the extent applicable to this case, the party submitting this pleading to the Court for filing may, at the time of closing argument, suggest to the trier of fact with respect to any element of damages, that unliquidated damages be calculated on a time-unit basis, without reference to a specific sum.

**MATTLEMAN, WEINROTH & MILLER, P.C.**  
*Attorneys for Plaintiff*

*/s/ Robert W. Williams*

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By: Robert W. Williams, Esq.

*/s/ Ashley S. Nechemia*

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By: Ashley S. Nechemia, Esq.

Dated: May 29, 2020

## Civil Case Information Statement

### Case Details: CAMDEN | Civil Part Docket# L-001862-20

Case Caption: BENAMAX ICE LLC VS MERCHANTS  
MUTUAL INS URANCE

Case Initiation Date: 05/29/2020

Attorney Name: ASHLEY S NECHEMIA

Firm Name: MATTLEMAN WEINROTH & MILLER, PC

Address: 401 RT 70 E STE 100

CHERRY HILL NJ 08034

Phone: 8564295507

Name of Party: PLAINTIFF : Benamax Ice LLC

Name of Defendant's Primary Insurance Company  
(if known): Unknown

Case Type: OTHER INSURANCE CLAIM (INCLUDING  
DECLARATORY JUDGMENT ACTIONS)

Document Type: Complaint

Jury Demand: NONE

Is this a professional malpractice case? NO

Related cases pending: NO

If yes, list docket numbers:

Do you anticipate adding any parties (arising out of same  
transaction or occurrence)? NO

Are sexual abuse claims alleged by: Benamax Ice LLC? NO

**THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE**  
CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? NO

If yes, is that relationship:

Does the statute governing this case provide for payment of fees by the losing party? NO

Use this space to alert the court to any special case characteristics that may warrant individual  
management or accelerated disposition:

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

Please check off each applicable category: Putative Class Action? NO Title 59? NO Consumer Fraud? NO

I certify that confidential personal identifiers have been redacted from documents now submitted to the  
court, and will be redacted from all documents submitted in the future in accordance with *Rule 1:38-7(b)*

05/29/2020

Dated

/s/ ASHLEY S NECHEMIA

Signed